

*United States Court of Appeals
for the Second Circuit*



APPENDIX

[F-65]

Docket No. **75-7243**

IN THE
United States Court of Appeals
For the Second Circuit

CLIFFORD J. ARNOLD,

Plaintiff-Appellee.

—against—

DONALD M. AGEN and VICTOR CERAMI,

Defendants-Appellants.

APPENDIX TO APPELLANTS' BRIEF

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants-Appellants
The Capitol
Albany, New York 12224

DAVID GERALD JAY
Attorney for Plaintiff-Appellee
1730 Liberty Bank Bldg.
Buffalo, New York 14202

DANIEL LENAHAN
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2056 Seneca Street
Buffalo, New York 14210



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COMPLAINT.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CLIFFORD J. ARNOLD,

Plaintiff, CIV- 74 - 52

- vs -

DONALD M. AGEN, JOHN DOE, JAMES DOE
and RICHARD ROE,
Defendants.

COMPLAINT

Plaintiff above-named, by his attorney, DAVID GERALD JAY, complaining of the Defendants, alleges:

I

JURISDICTION

Plaintiff is a citizen of the United States and resides in Erie County, State of New York. The Defendants, upon information and belief, are citizens of the United States and reside in Erie County, State of New York. This action arises under the provisions of the Fourteenth Amendment of the United States Constitution and Section 1983 and 1985, et seq. of Title 42 of the United States Code. Jurisdiction is conferred on this Court by 28 U.S.C. §1333. The Defendants are Security Officers of the State University of New York College at Buffalo, and while acting under color of law, in their official capacity as Security Officers, deprived Plaintiff of the privileges and immunities guaranteed to every citizen of the United States, including Plaintiff, by United States Constitution Amendments 4, 5, 7 and Section 1 of Amendment 14, and by reason thereof, this Court has jurisdiction.

II

STATEMENT OF THE CAUSE OF ACTION

1. On the 13th day of October, 1973, Plaintiff was at or near the intersection of Letchworth and Grant Streets in the City of Buffalo, New York, when the Defendant AGEN, allegedly acting in his official capacity as a Security Officer of the State University of New York College at Buffalo,² and without any just cause or provocation, and under color of his authority as a Security Officer, viciously attacked Plaintiff with a deadly weapon and severely beat Plaintiff about the head and face, inflicting upon Plaintiff serious bodily injuries.³ That this beating was administered in full view of three other Security Officers of the State University of New York College at Buffalo, whose names are presently unknown and have been listed here as "JOHN DOE, JAMES DOE and RICHARD ROE."⁴ That by these Officers' silence and acquiescence in the conduct of the Defendant ACEN, they condoned his actions and further, acted in such a way as to conspire with said Defendant AGEN to deprive Plaintiff of his civil rights as guaranteed by the provisions of the United States Constitution. That, having thus subdued the Plaintiff, the Defendant AGEN, with approval of the other officers heretofore mentioned, and still acting under color of his authority as a Security Officer, aided and abetted by the other Defendants, did arrest the Plaintiff and thereafter⁵ falsely imprison the Plaintiff, who was arraigned in the City Court of Buffalo on false and fraudulent charges, namely Obstruction of Governmental Administration and Harrassment.⁶ That thereafter these false and

Complaint.

fraudulent charges were dismissed by City Court Judge WILLIAM J. OSTROWSKI on or about the 15th day of November, 1973.

7. That thereafter, and on November 30, 1973, the Defendant, DONALD M. AGEN, placed another charge of Obstructing Governmental Administration against Plaintiff in the City Court of Buffalo and thereafter and on or about the 12th day of December, 1973, that charge was dismissed with prejudice by HON. ALOIS C. MAZUR, Judge of the City Court of Buffalo.

8. That the Defendant Police Officers knew well that said charges were wholly false and untrue and said Defendants made said false, fraudulent and malicious charges against Plaintiff to cover up and conceal their own vicious, criminal attacks on Plaintiff as hereinbefore alleged.

That in order to defend said charges, Plaintiff was required to retain an attorney, incurring attorney's fees, in order to preserve his good name.

By reason of the foregoing, Plaintiff has sustained general damages in the sum of \$25,000.00 and further, Plaintiff avers that punitive damages in the sum of \$75,000.00 should be assessed against these Defendants.

WHEREFORE, Plaintiff demands judgment against the Defendants in the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.) as general damages, SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.) as punitive damages, together with the costs and disbursements of this action, and Plaintiff further demands a trial by jury.

David Gerald Jay
DAVID GERALD JAY
Attorney for Plaintiff
1730 Liberty Bank Building
Buffalo, New York 14202
Tel: 853-2440

4
ANSWER.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CLIFFORD J. ARNOLD

Plaintiff

CIV - 74 - 52

vs.

ANSWER

DONALD M. AGEN

Defendant

Defendant above-named, by his attorney, LOUIS J. LEFKOWITZ,
Attorney General of the State of New York, by JAMES W. KILEY,
Deputy Assistant Attorney General, for its answer to the
Plaintiff's complaint herein:

FIRST DEFENSE

That annexed to and made a part of Defendant's answer is
a copy of Plaintiff's STATEMENT OF THE CAUSE OF ACTION which
the Defendant has separately numbered and paragraphed in order
to properly answer the complaint.

SECOND DEFENSE

That the answer of the Defendant, Donald M. Agen, is an
appearance on his behalf alone and does not constitute an
appearance by any of the other Defendants who are presently
unknown.

THIRD DEFENSE

That the complaint fails to state a claim against the
Defendant upon which relief can be granted.

FOURTH DEFENSE

1. That the Defendant, Donald M. Agen, admits the
allegations of Paragraph 1 of the complaint.
2. That the Defendant denies the allegations of Paragraph
2 of the complaint.
3. That the Defendant alleges he is without information
and knowledge sufficient to form a belief as to the truth of
the allegations in Paragraph 3.

Answer.

4. That the Defendant denies the allegation of Paragraph 4, which states that Defendant "conspired" to deprive Plaintiff of his civil rights.

5. That the Defendant denies the allegation of Paragraph 5 of the complaint.

6. That the Defendant alleges he is without information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 6.

7. That the Defendant alleges he is without information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 7.

8. That the Defendant denies the allegation of Paragraph 8.

9. That the Defendant denies the allegation of Paragraph 9.

FIFTH DEFENSE

That as an affirmative defense, Defendant alleges that on October 13, 1973, while acting in his official capacity as a security officer of the State University of New York at Buffalo, and while performing an official duty, the issuance of a vehicle and traffic violation, the Defendant was attacked without provocation by the Plaintiff and in order to defend himself, the Defendant did use that amount of force reasonably necessary to subdue the Plaintiff and avoid physical harm.

WHEREFORE, the Defendant demands judgment dismissing Plaintiff's complaint herein, with cost.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant

By:

JAMES W. KILEY
Deputy Assistant Attorney
General, of Counsel

STATEMENT OF THE CAUSE OF ACTION

1. On the 13th day of October, 1973, Plaintiff was at or near the intersection of Letchworth and Grant Streets in the City of Buffalo, New York, when the Defendant AGEN, allegedly acting in his official capacity as a Security Officer of the State University of New York College at Buffalo,
2. and without any just cause or provocation, and under color of his authority as a Security Officer, viciously attacked Plaintiff with a deadly weapon and severely beat Plaintiff about the head and face, inflicting upon Plaintiff serious bodily injuries.
3. That this beating was administered in full view of three other Security Officers of the State University of New York College at Buffalo, whose names are presently unknown and have been listed here as "JOHN DOE, JAMES DOE and RICHARD ROE."
4. That by these Officers' silence and acquiescence in the conduct of the Defendant AGEN, they condoned his actions and further, acted in such a way as to conspire with said Defendant AGEN to deprive Plaintiff of his civil rights as guaranteed by the provisions of the United States Constitution. That, having thus subdued the Plaintiff, the Defendant AGEN, with approval of the other officers heretofore mentioned, and still acting under color of his authority as a Security Officer, aided and abetted by the other Defendants, did arrest the Plaintiff and thereafter
5. falsely imprison the Plaintiff, who was arraigned in the City Court of Buffalo on false and fraudulent charges, namely Obstruction of Governmental Administration and Harrassment.
6. That thereafter these false and fraudulent charges were dismissed by City Court Judge WILLIAM J. OSTROWSKI on or about the 15th day of November, 1973.

Answer.

7. That thereafter, and on November 30, 1973, the Defendant, DONALD M. AGEN, placed another charge of Obstructing Governmental Administration against the Plaintiff in the City Court of Buffalo and thereafter and on or about the 12th day of December, 1973, that charge was dismissed with prejudice by HON. ALOIS C. MAZUR, Judge of the City Court of Buffalo.
8. That the Defendant Police Officers knew well that said charges were wholly false and untrue and
9. said Defendants made said false, fraudulent and malicious charges against Plaintiff to cover up and conceal their own vicious, criminal attacks on Plaintiff as hereinbefore alleged.

AMENDED COMPLAINT.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CLIFFORD J. ARNOLD,

Plaintiff,

CIV - 74 - 52

- vs -

DONALD M. AGEN, JOHN DOE, JAMES DOE
and RICHARD ROE,
Defendants.

COMPLAINT

Plaintiff above-named, by his attorney, DAVID GERALD
JAY, complaining of the Defendants, alleges:

I

JURISDICTION

Plaintiff is a citizen of the United States and resides in Erie County, State of New York. The Defendants, upon information and belief, are citizens of the United States and reside in Erie County, State of New York. This action arises under the provisions of the Fourteenth Amendment of the United States Constitution and Section 1983 and 1985, et seq. of Title 42 of the United States Code. Jurisdiction is conferred on this Court by 28 U.S.C. §1333. The Defendants are Security Officers of the State University of New York College at Buffalo, and while acting under color of law, in their official capacity as Security Officers, deprived Plaintiff of the privileges and immunities guaranteed to every citizen of the United States, including Plaintiff, by United States Constitution Amendments 4, 5, 7 and Section 1 of Amendment 14, and by reason thereof, this Court has jurisdiction.

Amended Complaint.

II

STATEMENT OF THE CAUSE OF ACTION

On the 13th day of October, 1973, Plaintiff was at or near the intersection of Letchworth and Grant Streets in the City of Buffalo, New York, when the Defendant AGEN, allegedly acting in his official capacity as a Security Officer of the State University of New York College at Buffalo, and without any just cause or provocation, and under color of his authority as a Security Officer, viciously attacked Plaintiff with a deadly weapon and severely beat Plaintiff about the head and face, inflicting upon Plaintiff serious bodily injuries. That this beating was administered in full view of three other Security Officers of the State University of New York College at Buffalo, whose names are presently unknown and have been listed here .. "JOHN DOE, JAMES DOE and RICHARD ROE." That by these Officers' silence and acquiescence in the conduct of the Defendant AGEN, they condoned his actions and further, acted in such a way as to conspire with said Defendant AGEN to deprive Plaintiff of his civil rights as guaranteed by the provisions of the United States Constitution. That, having thus subdued the Plaintiff, the Defendant AGEN, with approval of the other officers heretofore mentioned, and still acting under color of his authority as a Security Officer, aided and abetted by the other Defendants, did arrest the Plaintiff and thereafter falsely imprison the Plaintiff, who was arraigned in the City Court of Buffalo on false and fraudulent charges, namely Obstruction of Governmental Administration and Harrassment. That thereafter these false and

Amended Complaint.

fraudulent charges were dismissed by City Court Judge WILLIAM J. OSTROWSKI on or about the 15th day of November, 1973.

That thereafter, and on November 30, 1973, the Defendant, DONALD M. AGEN, placed another charge of Obstructing Governmental Administration against Plaintiff in the City Court of Buffalo and thereafter and on or about the 12th day of December, 1973, that charge was dismissed with prejudice by HON. ALOIS C. MAZUR, Judge of the City Court of Buffalo.

That the Defendant Police Officers knew well that said charges were wholly false and untrue and said Defendants made said false, fraudulent and malicious charges against Plaintiff to cover up and conceal their own vicious, criminal attacks on Plaintiff as hereinbefore alleged.

That in order to defend said charges, Plaintiff was required to retain an attorney, incurring attorney's fees, in order to preserve his good name.

By reason of the foregoing, Plaintiff has sustained general damages in the sum of \$25,000.00 and further, Plaintiff avers that punitive damages in the sum of \$75,000.00 should be assessed against these Defendants.

WHEREFORE, Plaintiff demands judgment against the Defendants in the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.) as general damages, SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.) as punitive damages, together with the costs and disbursements of this action, and Plaintiff further demands a trial by jury.

David Gerald Jay
DAVID GERALD JAY
Attorney for Plaintiff
1730 Liberty Bank Building
Buffalo, New York 14202
Tel: 853-2440

ORDER AMENDING COMPLAINT.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CLIFFORD J. ARNOLD,

Plaintiff

- vs -

ORDER

DONALD M. AGEN, JOHN DOE, JAMES DOE
and RICHARD ROE,

Civil 74 - 52

Defendants

UPON READING AND FILING the Notice of Motion and
Affidavit of DAVID GERALD JAY, dated March 8, 1974, and proof
of due service thereof, the Summons and Complaint in this action
and all other prior proceedings,

NOW, upon Motion of DAVID GERALD JAY, Attorney for
the Plaintiff, it is

ORDERED that the Summons and Complaint be amended to
reflect the true names of the Defendants JOHN DOE, JAMES DOE
and RICHARD ROE, and the same hereby are amended to read
VICTOR CERAMI, FRANK COPPOLA and JAMES O'BRIEN, and it is further

ORDERED that process issue to these Defendants and
the title of this action is hereby amended to read as follows:

CLIFFORD J. ARNOLD,

Plaintiff

- vs -

DONALD M. AGEN, VICTOR CERAMI,
FRANK COPPOLA and JAMES O'BRIEN,

Defendants.

John T. Cawley
United States District Judge

NOTICE TO ADMIT.

ITED STATES DISTRICT COURT
STERN DISTRICT OF NEW YORK

IFFORD J. ARNOLD,

Plaintiff

NOTICE TO ADMIT

- vs -

NALD M. AGEN, et al.,

TRUTH OF FACTS

Civil 74 - 52

Defendants

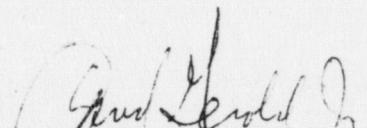
PLEASE TAKE NOTICE that the Plaintiff hereby requests
the Defendants, pursuant to the provisions of Rule 36 of the
Federal Rules of Civil Procedure, and within thirty (30) days
after service of this Notice, and for the purpose of this action
only, and subject to all pertinent objections to admissibility
which may be interposed at the trial, to admit the truth of
the following:

- . Rees Street is a public highway, running generally in a north-south direction, located in the City of Buffalo, County of Erie and State of New York.
- . Letchworth Street is a public highway, running generally east and west in the City of Buffalo, County of Erie and State of New York.
- . At the south-east corner of Rees and Letchworth Streets, there is located a stop sign for north-bound traffic on Rees Street.
- . Said stop sign is the traffic control device allegedly disregarded by the operator of a Pontiac vehicle, shortly before the incident which is the subject of this action.
- . That said stop sign was erected by the City of Buffalo, New York.

Notice to Admit.

6. That said stop sign is maintained by the City of Buffalo, New York.
7. That said stop sign is located on property owned by the City of Buffalo.
8. That at no time on the 13th day of October, 1973, at approximately 3:00 A.M., did said Pontiac automobile, bearing license number 700 NIK, enter upon property owned by the State University College at Buffalo.
9. That prior to October 13, 1973, the Defendants had been appointed Security Officers, pursuant to the provisions of Section 355(2)(m) of the Education Law of the State of New York.

Dated: Buffalo, New York
July 1, 1974.


DAVID GERALD JAY
Attorney for Plaintiff
1730 Liberty Bank Building
Buffalo, New York 14202
Tel: 853-2440

TO: HON. LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Attorney for Defendants
General William Donovan State Office Bldg.
125 Main Street
Buffalo, New York 14203
Attention: James W. Kiley
Deputy Assistant Attorney General

RESPONSE TO REQUEST FOR ADMISSIONS.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CLIFFORD J. ARNOLD

Plaintiff

CIVIL 74 - 52

- vs -

DONALD M. AGEN, ET AL.

Defendants

RESPONSE TO REQUEST
FOR ADMISSIONS--
DENIALS & ADMISSIONS
OF SPECIFIC FACTS AND
EXPLANATORY STATEMENT
OF INABILITY TO ADMIT
OR DENY

Now come the Defendants, VICTOR CERAMI, FRANK COPPOLA and JAMES O'BRIEN, and in answer to the Plaintiff's Request for Admissions heretofore on the 1st day of July, 1974, served in the above-stated matter, say:

1. The truth of statement Number 1 in the Request for Admissions is admitted.
2. The truth of statement Number 2 in the Request for Admissions is admitted.
3. Defendants deny the truth of the statement Number 3 in the Request for Admissions. The said stop sign which pertains to this action is located at the southeast corner of Rees Street and Rockwell Street.
4. The truth of statement Number 4 in the Request for Admissions is admitted to the extent that the stop sign located at the southeast corner of Rees Street and Rockwell Street was the traffic control device allegedly disregarded by the operator of the Pontiac vehicle.

Response to Request for Admissions.

5. The truth of statement Number 5 in the Request for Admissions is admitted to the extent that it refers to the stop sign at the southeast corner of Rees Street and Rockwell Street.

6. The truth of statement Number 6 in the Request for Admissions is admitted to the extent that it refers to the stop sign located at the southeast corner of Rees Street and Rockwell Street.

7. Defendants deny the truth of statement Number 7 in the Request for Admissions. The stop sign located at the southeast corner of Rees Street and Rockwell Street is understood to be located on property owned by the State University College at Buffalo.

8. The truth of statement Number 8 in the Request for Admissions is admitted.

9. Defendants deny the truth of statement Number 9 in the Request for Admissions. Prior to October 13, 1973, the Defendants had been appointed Peace Officers pursuant to the provisions of Section 355(?)^(m) of the Education Law of the State of New York. The appropriate Civil Service title of each of the Defendants is Campus Security Officer II.

Dated: Buffalo, New York
December 2, 1974

LOUIS J. LEFKOWITZ
Attorney General

BY:

JAMES W. KILEY
Deputy Assistant Attorney General,
of Counsel

TO: DAVID GERALD JAY
1730 Liberty Bank Building
Buffalo, New York 14202

PLAINTIFF'S REQUEST TO CHARGE.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CLIFFORD J. ARNOLD,

Plaintiff

- vs -

DONALD M. AGEN, VICTOR CERAMI,
FRANK COPPOLA and JAMES O'BRIEN,

PLAINTIFF'S REQUEST
TO CHARGE

Civil - 74 - 52

Defendants

Plaintiff, by his attorney, DAVID GERALD JAY, requests the Court to charge the jury in this matter as follows:

1. The Plaintiff in this case claims damages for personal injuries, alleged to have been suffered or sustained by him as a result of the deprivation, under color of State Law, statute, regulation, custom or usage, of a right and privilege and immunity secured to Plaintiff, both by the Constitution of the United States, and by an Act of Congress, providing for equal rights to all persons within the jurisdiction of the United States.

Specifically, the Plaintiff alleges that on or about the thirteenth day of October, 1973, in the City of Buffalo, New York, the Defendants were employed by the Campus Security Department of the State University of New York College at Buffalo, commonly known as Buffalo State; and that, while acting as such Campus Security personnel, under color of the Laws of the State of New York, they knowingly subjected the

Plaintiff's Request to Charge.

Plaintiff to the deprivation of a right and privilege secured and protected to him by the Constitution and Laws of the United States, namely, the Constitutional Right not to be deprived of his liberty without due process of law, by unlawfully imposing corporal punishment upon Plaintiff, which consisted of beating Plaintiff with a black-jack, an instrument commonly known as a "sapper" or "sap," causing certain injuries; further, that the Defendants arrested the Plaintiff and brought certain charges against him in the City Court of Buffalo, which charges required him to secure legal counsel to defend him on two occasions, resulting in the dismissal of the charges, which Plaintiff claims were both falsely and maliciously brought; further, Plaintiff alleges that Defendants caused him to be imprisoned, pending his arraignment in the City Court of Buffalo, falsely and maliciously, and that said charges were brought by the Defendants in an attempt to cover up and conceal their own wrongful conduct to the Plaintiff; all to Plaintiff's damage in the sum of Twenty Five Thousand Dollars.

Plaintiff further alleges that the acts of the Defendants as alleged were maliciously, recklessly, wantonly and oppressively done; and, by reason thereof, Plaintiff asks for an award of Seventy Five Thousand Dollars, as punitive and exemplary damages, in addition to the actual or compensatory damages claimed by him. (Federal Jury Practice and Instructions [hereinafter FJPI] Section 87.1).

Plaintiff's Request to Charge.

2. Section 1983 of Title 42 of the United States Code provides that any inhabitant of this Federal District may seek redress in this Court, by way of damages, against any person or persons, who, under color of law, statute, ordinance, regulation, or custom, knowingly subjects such inhabitant to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or Laws of the United States. FJPI § 87.02.

3. The statutes just outlined to you comprise one of the Civil Rights Acts enacted by the Congress under the Fourteenth Amendment to the Constitution of the United States. The Fourteenth Amendment to the Constitution provides that:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws."

4. Acts are done "under color of law" of a State, not only when State officials act within the bounds or limits of their lawful authority, but also when officers act without and beyond the bounds of their lawful authority. In order for unlawful acts of an official to be done "under color of law" however, the unlawful acts must be done while the official is purporting or pretending to act in the performance of his official duties; that is to say, the unlawful acts must consist

Plaintiff's Request to Charge.

of an abuse or misuse of power, which is possessed by the official only because he is an official; and the unlawful acts must be of such a nature, and be committed under such circumstances, that they would not have occurred but for the fact that the person committing them was an official, purporting to exercise his official powers. FJPI §87.08.

5. Plaintiff does not claim that all of the Defendants are equally responsible for the damages which he has incurred. It is alleged that some of the Defendants have, by their failure to take any action, caused his injuries.

Under the law, a person can be liable for his inaction, if he fails to perform a duty which is imposed upon him by law.

In this case, Plaintiff's claim that some of the Defendants, although not active participants, could have prevented his beating; could have prevented the bringing of charges against him; and, by failing to act, they are responsible to him in damages. (Byrd v. Brishke, 466 F.2d 6 (7th Cir.1972); Whirl v. Kern, 407 F.2d 781 (5th Cir.1968) cert. den. 396 U.S. 901 (1969).

6. Defendants derive their authority from a provision of New York State Law, known as Section 355(2)(m) of

Plaintiff's Request to Charge.

the Education Law, which provides, in part:

"It shall be the duty of [Campus Security Officers] to preserve law and order in and about the buildings and grounds of the institution of the state university to which they are assigned."

The law fails to provide for any authority of Campus Security Officers outside the grounds of the university or college. This Court charges you that the Defendants had no police powers once they left the grounds of the Campus.

7. There has been testimony that the Defendant DONALD AGEN wished to retain Plaintiff's car registration and take it with him to the campus. This Court charges that he could not lawfully do this, as he had no power to issue a traffic summons for an offense which was committed off the campus. Another provision of State Law which gives Campus Security Officers their authority in traffic matters provides, in part:

". . . the persons designated as peace officers by the Board of Trustees shall have the power to issue uniform traffic summons and complaint as provided in the Vehicle and Traffic Law, and simplified traffic informations as provided for in the Criminal Procedure Law, for traffic violations committed upon the property, streets, roads and highways owned, controlled and maintained by state university . . . "

Consequently, there is no authority to issue a traffic summons for offenses committed off the campus. [Educ.L. §362(4)].

Plaintiff's Request to Charge.

8. There has been testimony that the Defendant VICTOR CERAMI utilized a black-jack, "sapper" or "sap" when he struck Mr. Arnold. This Court charges, that under New York State Law, it is illegal for any person to possess such a dangerous or deadly instrument without permission, as granted by the Legislature.

Permission has been granted to members of the Armed Forces and authorized Police Agencies; however, State University Security personnel have not been granted such permission; therefore, Mr. Cerami was violating the law when he possessed and used the black-jack in question.

9. The fact that Mr. Cerami was violating the law when he possessed and used the black-jack can be utilized by you, the members of this jury, when determining whether he acted willfully, wantonly, recklessly or maliciously as charged by the Plaintiff.

The fact that Defendant DONALD AGEN had no authority to withhold, or even demand production of, the registration to Mr. Arnold's car can also be used by you in deliberating whether Mr. Agen acted willfully, maliciously, wantonly or oppressively as claimed by the Plaintiff.

10. If you should find that the Plaintiff is entitled to a verdict, in arriving at the amount of the award, you should include the reasonable value, not exceeding the actual

Plaintiff's Request to Charge.

cost to the Plaintiff, of any examinations, attention and care by physicians and surgeons and others, shown by the evidence in the case to have been reasonably required and actually given in the treatment of the Plaintiff; also, the reasonable value, not exceeding the actual cost to the Plaintiff, of any hospital accommodations and care, X-ray pictures, medicine and other supplies, if any, shown by the evidence in the case, to have been reasonably required and actually used in the treatment of the Plaintiff. [FJPI 578.03].

11. If you should find that the Plaintiff is entitled to a verdict, you will award him a sum which will compensate him reasonably for:

- i any pain, suffering and mental anguish already suffered by him and proximately resulting from the injury in question; and
- ii any pain, suffering and mental anguish which you find from the evidence in the case that he is reasonably certain to suffer in the future from the same cause.

[FJPI 578.05].

12. If you should find that the Plaintiff is entitled to a verdict, you will award him a sum which will also compensate him reasonably for any attorney's fees which he may have expended in the defense of the criminal charges brought against him by the Defendants. (See, Kerr v. City of Chicago, 424 F.2d 1134, 1141).

Plaintiff's Request to Charge.

13. If you should find, from a preponderance of the evidence in this case:

- 1) That the Defendant used greater force on the Plaintiff than the Defendants believed was reasonably necessary in order to accomplish the lawful purpose intended, or
- 2) That the Defendants used more force on the Plaintiff than would have appeared to a reasonable person, in like circumstances, to be necessary, in order to accomplish the lawful purposes intended, or
- 3) That the Defendants acted as they did toward Plaintiff, not to perform their lawful duty, but prompted by another, unlawful motive, then you may find that the Defendants acted unlawfully, contrary to the Law of the State of New York.

14. If you should find, from a preponderance of the evidence, that the Defendants acted beyond the bounds of their lawful authority under State Law, at the time and place alleged, then you may further find that the Defendants did, without due process of law, deprive the Plaintiff of liberty secured to him and protected by the Constitution and Laws of the United States. If you so find, you must proceed to determine the amount of the

Plaintiff's Request to Charge.

actual or compensatory damages suffered or sustained by the Plaintiff, as a proximate result of the Defendants' conduct, as well as any sum for punitive or exemplary damages which you may also determine. (Kerr v. City of Chicago, supra.)

15. Plaintiff further requests that FJPI, §78.11 be charged on the issue of punitive damages.

Respectfully submitted,

DAVID GERALD JAY
Attorney for Plaintiff
1730 Liberty Bank Building
Buffalo, New York 14202
Tel: 853-2440

DEFENDANTS' REQUEST TO CHARGE.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CLIFFORD J. ARNOLD

Plaintiff

DEFENDANTS' REQUEST
TO CHARGE

- vs -

CIVIL - 74 - 52

DONALD M. AGEN, VICTOR CERAMI,
FRANK COPPOLA and JAMES O'BRIEN

Defendants

Defendants Victor Cerami, Frank Coppola and James O'Brien,
by their attorney, James W. Kiley, request the Court to charge
the jury in this matter as follows:

1. The Court charges you that the Defendant Security
Officers derived their authority from Section 355(2)(m) of the
Education Law. The pertinent provisions of that law read:

"It shall be the duty of such security
officers and peace officers to preserve
law and order in and about the buildings
and grounds of the institution of the
State University to which they are
assigned. Persons appointed peace officers,
shall in the course of their actual
performance of and official duties
the powers of police officers as defined
in the Criminal Procedure Law."

If you find that the Defendants were appointed peace
officers under the authority of Section 355(2)(m) of the

Defendants' Request to Charge.

Education Law, the Court charges you that such peace officers have the full powers of police officers as defined in the Criminal Procedure Law. The Court further charges you that the phrase "It shall be the duty of such security officers and peace officers to preserve law and order in and about the buildings and grounds of the State University", means that the security officers have powers of police officers both on and about the University grounds.

The word "about" may be construed to mean within a reasonable distance from the University campus.

2. The Court charges you that the Defendants also derive authority from Section 140.25(5)(a) of the Criminal Procedure Law. That section defines the geographical jurisdiction of peace officers other than police officers. The pertinent section (a) reads:

"The geographical area of employment of any peace officer employed as such by an agency of the State consists of the entire State."

Therefore, the Court charges you that the Defendant Security Officers have police powers beyond the grounds of the campus.

3. There has been testimony by each of the defendants and the Director of Security at the State College that they understood the stop sign in question was located on campus property. The Director of Security further testified that

Defendants' Request to Charge.

approximately eight summonses for traffic violations had been issued for that stop sign prior to the date of the incident on October 13, 1973.

Further, there was testimony by Mr. Gertis, a recognized surveyor, that he surveyed the premises and found that, in fact, the stop sign in question was located on campus property.

If you find that the stop sign was located on University property, then the doctrine of "Hot Pursuit" applies. "Hot Pursuit" means that if a crime, offense or traffic violation was committed on University property, the Security Officers would be entitled to pursue the offender off campus.

Specifically, if you find that the driver of the vehicle, Richard Tarquinio, failed to stop for the stop sign in question in violation of the Vehicle and Traffic Law, and that the stop sign was located on University property, you must find that the Security Officers had authority to pursue him and issue a summons.

The Court further charges you that in fact, there has been testimony that the driver, Richard Tarquinio, was issued a summons for violation of Section 1172(a) of the Vehicle and Traffic Law and that, in fact, he pled guilty to such violation.

4. The Court charges you that pursuant to Section 140.25 of the Criminal Procedure Law, a peace officer other than a police officer, . . . , may arrest a person for (a) any offense when he has reasonable cause to believe that such

Defendants' Request to Charge.

person has committed such offense in his presence; (b) a crime when he has reasonable cause to believe that such person has committed such crime, whether in his presence or otherwise. Reasonable cause existed if the factors and circumstances known to Defendant, or the information supplied to him before making the arrest, were such as to lead a reasonable and prudent person to believe that the crime of Obstruction of Governmental Administration, and/or in the alternative, the offense of Harassment had been committed and that the Plaintiff was the person who had committed it. An arrest made with reasonable cause is lawful even though, as it now appears, the crime of Governmental Obstruction and the offense of Harassment had not been committed.

5. If the jury shall find that the Defendant, Donald Agen, while acting in his official capacity as peace officer, was lawfully issuing a summons to Richard Tarquinio for a traffic violation and that during the course of such issuance the Plaintiff Clifford Arnold interfered with Defendant Agen's official function of issuing such summons, then the jury must find that the subsequent arrest and detention of Plaintiff Arnold was lawful.

If, in the alternative, the jury finds that the Defendant Donald Agen, while acting in his official capacity as a peace officer, was lawfully issuing a summons to Richard Tarquinio for a traffic violation, and that during the course of such

Defendants' Request to Charge.

issuance, was struck, shoved, kicked or otherwise subjected to physical contact, or an attempt or threat to do the same was accomplished, or in the event that abusive or obscene language was used by the Plaintiff Clifford Arnold or Plaintiff Clifford Arnold engaged in a course of conduct or repeatedly committed acts which served to alarm or seriously annoy any other person; then the jury must find that the arrest and subsequent detention for Harassment was lawful.

6. If you find that the Defendant Donald Agen, on October 13, 1973, while acting in his official capacity as Security Officer for the State University of New York at Buffalo, and while performing an official duty, to wit, the issuance of a vehicle and traffic summons, was attacked without provocation by the Plaintiff, and in order to defend himself, the Defendant did use that amount of force reasonably necessary to defend himself and avoid physical harm, then the complaint of assault must be dismissed against Officer Agen.

7. If you find that the evidence does not show any involvement by Officers O'Brien and Coppola on the alleged assault and false imprisonment charges, then you must dismiss the entire complaint against these two men.

8. There has been testimony that Security Officer Victor Cerami utilized a black-jack when he struck Plaintiff Clifford Arnold. This Court charges that by virtue of the

Defendants' Request to Charge.

Education Law and Mr. Cerami's status as a peace officer, he had a legal right to possess such instrument. The Court further charges you that, therefore, the only issue before you concerning Officer Cerami's use of the black-jack is whether he used reasonable force in his attempt to subdue the Plaintiff Clifford Arnold.

9. The Court charges you on general damages as per New York Pattern Jury Instructions 2:277.

10. The Court charges you that in reporting your verdict, if you find for the Plaintiff, you will state separately the amount fixed by you as compensatory damages and the amount, if any, fixed by you as punitive damages, in respect to each individual defendant.

Respectfully submitted,

JAMES W. KILEY
Assistant Attorney General
Attorney for Defendant
125 Main Street
Buffalo, New York 14203

EXCERPTS FROM THE CHARGE TO THE JURY.

I charge you as a matter of law that the defendants in this case were not peace officers, not police officers, and they had no legal authority to carry a blackjack.

I charge you further as a matter of law that the defendants had no authority to issue summonses for acts committed off the campus.

The circumstances that the stop sign may have been on state property is not material. Its purpose was to control traffic on Rees Street, a city street. Mr. Tarquinio's offense, if any, occurred on a city street and not on the campus.

* * * * *

Excerpts from the Charge to the Jury.

THE COURT: Are there any exceptions or requests?

MR. KILEY: Your Honor, on behalf of the defendant, Victor Cerami, I respectfully take exception to your charge that the defendants are not peace officers and not police officers, and had no legal authority to carry a blackjack. By virtue of Section 355(2)(m) of the Education Law --

THE COURT: Let's not have an argument on it. I will note your exception.

MR. KILEY: I respectfully except to that portion of your charge wherein you said that the defendants are without legal authority to issue summonses off campus.

THE COURT: I did not say that. I said for crimes committed off campus.

MR. KILEY: I would respectfully except to that, too.

MR. LENAHAN: May I discuss this a moment with Mr. Kiley?

THE COURT: Yes.

MR. JAY: No exceptions here.

MR. LENAHAN: Your Honor, I would respectfully make the same exceptions as Mr. Kiley, and I would add one or more of my own. Specifically, I take exception to the charge of the Court that the stop sign's position has no bearing on the case, and I respectfully request that the Court further charge the doctrine of hot pursuit and custom and usage, which we discussed before, and we requested that in our requests to charge. That is all.

THE COURT: The doctrine of hot pursuit is not, to my mind, applicable here. If it lends itself to clarification of what Mr. Kiley excepted to, I thought I clearly indicated that the defendants did not have the authority to issue summons for criminal actions or crimes that occurred off campus. If I wasn't clear on that, that is what I intended. The doctrine of hot pursuit would only come into play if the crime had been committed on campus and the officers, such as these defendants, were pursuing the culprit, so to speak, from that point on campus to some other point off campus

Excerpts from the Charge to the Jury.

in a continued hot pursuit. That doctrine does not control here if you find that what was done was not done on campus.

Now, the other doctrine, the other one you wanted?

MR. LENAHAN: Custom and useage of the defendants here, or the security officers, at that particular intersection. There has been quite a bit of testimony regarding that.

THE COURT: Well, custom and useage, without any more shown, I am not saying that there could not be more shown that would make it into a more viable standard, does not create legality. What I am saying, the custom and useage, for example, to carry a blackjack does not create the legality of carrying a blackjack, and I have charged the jury that these defendants in their role as campus security officers did not have the authority to carry a blackjack.

MR. KILEY: Your Honor, may I have another short word?

THE COURT: Yes.

MR. KILEY: Your Honor, I did submit -- Mr. Lenahan did the same -- defendants' requests to charge, and they also contain additional

Excerpts from the Charge to the Jury.

points of law and --

THE COURT: Do you want to refer to them by number?

MR. KILEY: I didn't know that your Honor wanted me to get into a discussion.

THE COURT: I don't know if you do. that is why I am asking that you refer to them by number.

MR. KILEY: First of all, I refer to that section --

THE COURT: This is yours?

MR. KILEY: Yes, it is.

THE COURT: What number?

MR. KILEY: First of all, paragraph number one, which refers to Section 355(2)(m) of the Education Law.

THE COURT: All right.

MR. KILEY: Secondly, the second paragraph, which refers to Section 140.25, Subsection 5 -- Subsection (a) of the Criminal Procedure Law.

THE COURT: All right, anything further?

MR. KILEY: Nothing further, your Honor.

MR. LENAHAN: I will join in that on behalf of the defendant Agen.

THE COURT: I have had those in mind while I was preparing and giving my charge.

MR. JAY: Your Honor, I have one request, paragraph

Excerpts from the Charge to the Jury.

9 of our requests to charge, your Honor,
the first part of that.

THE COURT: No, I have had than in mind, too, Mr. Jay.

MR. LENAHAN: I take exception to your Honor not charging
those specific requests.

MR. JAY: Please note my exception.

THE COURT: The business of taking exceptions is
nothing out of respect to what the Court
has said, but it gives them, at least
in the old days, a protection on appeal
so they could say they excepted to it.

MR. KILEY: I would respectfully submit my exception.

THE COURT: Certainly. Anything further? All right,
swear the marshals.

(Two deputy marshals were duly sworn.)

* * * * *

EXHIBIT A — Appointments of Defendants
Azen & Cerami.

COLLEGE S.U.C.B.

STATE UNIVERSITY OF NEW YORK

D.O.B. 4/25/50 DESIGNATION AND APPOINTMENT OF PEACE OFFICER

Name	Last	First	Initial	Item No.	Civil Service Title
CERAMI	VICTOR		S.	#27080	Campus Security Officer II
College	Address				
State University College at Buffalo	1300 Elmwood Avenue, Buffalo, New York				

Is designated and appointed a Peace Officer of State University of New York at the above college and is given the powers and duties of a Peace Officer of State University.

Date Oath of Office Taken	<u>2/22/73</u>	Date Oath Filed with Dept. of State
Chief Administrative Officer	<u>J. J. Freiwell Jr.</u>	
C.O. Use	President's Office Use	

Form B-133

CS-6 (10/72)

STATE UNIVERSITY OF NEW YORK
OFFICE OF SECURITY SERVICES

APPOINTMENT * * OF PEACE OFFICER

INSTRUCTIONS: PREPARE IN TRIPPLICATE
1. Oath Administered Only To Peace Officers.
2. Delete Phrases Marked With * Which Do Not Apply.
3. Forward Two Copies To Office Of Security Services.

LAST NAME <u>Azen</u>	FIRST <u>Iconald</u>	INITIAL <u>M.</u>	ITEM NO. <u>6077</u>	PROFESSIONAL OR CIVIL SERVICE TITLE <u>Campus Security Officer II</u>
INSTITUTION TO WHICH ASSIGNED <u>State University College at Buff.</u>		in accordance with paragraph m of subdivision 2 of Section 355		

of the Education Law is appointed * * as a peace officer at his * * assigned institution of the State University of New York.

"I solemnly swear* that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the Juries of the offices of Campus Security Officer II (Insert To Be Filled In) and Peace Officer of the State University, according to the best of my ability."

DATE 1/1/73 SIGNATURE OF APPOINTEE J. J. Freiwell Jr. SIGNATURE AND TITLE OF DULY AUTHORIZED OFFICER J. J. Freiwell Jr.

I hereby acknowledge receipt of a copy of Public Officers Law Sections 73 through 78, have read the same, and agree to conform to the provisions thereof.		DATE <u>1/1/73</u>
SIGNATURE OF APPOINTEE <u>J. J. Freiwell Jr.</u>		

EXHIBIT B — Civil Service Announcement.

**NEW YORK STATE ANNOUNCES
OPPORTUNITIES IN GOVERNMENT**



NO. 24-236 CAMPUS SECURITY OFFICER II \$9,593*

NO. 24-238 SUPERVISING CAMPUS SECURITY OFFICER \$11,389*

NO. 24-237 CAMPUS SECURITY SPECIALIST \$11,337*

*Beginning Salary

THE POSITIONS: These positions are at the various college campuses of the State University of New York. At present, there are numerous vacancies Statewide. Appointees in the New York City area (*Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester Counties*) and in Monroe County will receive an additional \$200 annual salary differential.

UNIFORMS WILL BE PROVIDED

Campus Security Officer II's*, on the campuses of the State University of New York, are responsible for the detection and prevention of crime and the enforcement of State and local laws, rules and regulations for the protection of persons, property and the general maintenance of peace, order and security. Incumbents must develop and maintain a positive relationship with all segments of the campus community to obtain their cooperation and support in conducting a successful campus law enforcement program. Typical activities include crowd control, foot and mobile patrols, traffic control and radio dispatching.

Supervising Campus Security Officers*, on the campuses of the State University, assign, instruct, supervise and direct a force of campus security personnel in the enforcement of State and local laws, rules and regulations for the protection of persons and property and the general maintenance of peace, order and security. Incumbents must develop and maintain a positive working relationship with all segments of the campus community to obtain their support and cooperation in conducting a successful campus law enforcement program. Supervising Campus Security Officers report to the Director and Assistant Director of Security and must be able to perform all of the duties of a Campus Security Officer II.

Campus Security Specialists*, on the campuses of the State University, conduct initial, follow-up and special investigations of actual and suspected or alleged violations of criminal law and University rules and regulations and employ a variety of law enforcement techniques for the collection of evidence, the arrest and apprehension of violators, the protection of persons and property and the general maintenance of peace, order and security. Incumbents must develop and maintain a positive relationship with all segments of the campus community to obtain their support and cooperation in conducting a successful campus law enforcement program. Campus Security Specialists report to the Director and Assistant Director of Security.

**Incumbents of all these positions have peace officer status.*

SUBJECTS OF EXAMINATIONS:

Written test as described below Relative Weight 1
Oral test as described below Relative Weight 1

Candidates must achieve a passing score in each announced subject of examination.

SCOPE OF WRITTEN TESTS: The written tests will be designed to test for knowledge, skills, and/or abilities in such areas as those shown on the following chart:

	No. 24-236	No. 24-238	No. 24-237
1. Using good judgment in the campus security field	X	X	X
2. Preparing written material	X	X	X
3. NYS laws which include the Penal Law, Criminal Procedure Law, and Vehicle and Traffic Law	X	X	X
4. Investigative techniques		X	X
5. Supervision		X	
6. Analyzing and evaluating information and evidence		X	X

SCOPE OF ORAL TESTS: The oral tests, which will be held in New York State ONLY, will be designed, against the general background of the position(s), to evaluate each candidate's abilities: (1) to reason clearly and make sound judgments; (2) to present ideas clearly and effectively; and (3) to establish satisfactory relationships with others.

Written Tests To Be Held MARCH 22, 1975
Applications MUST Be Postmarked No Later Than FEBRUARY 18, 1975

S-1/T-4-JUD-map

SEE REVERSE SIDE

NOS. 24-236, 24-237 & 24-238 CAMPUS SECURITY POSITIONS

Issued: 1/3/75

New York State - An Equal Opportunity Employer

Exhibit B — Civil Service Announcement.

CAMPUS SECURITY POSITIONS

— 2 —

NOS. 24-236, 24-237 & 24-238

MINIMUM QUALIFICATIONS: Candidates must meet the following requirements on or before the date of the written tests:
 For No. 24-236 Campus Security Officer II: two years of satisfactory full-time paid experience as a member of an organized law-enforcement agency or a campus security force. This experience must have been in a position in which the candidate was responsible for the general enforcement of the criminal law and had police powers of arrest, as defined by the New York State Criminal Procedure Law. Employment by a contract guard service, or as a specialized investigator, is **not qualifying**. Experience as a military police officer will be accepted.

Satisfactory completion of college study* leading to a degree in police science may be substituted for the required experience on a year-for-year basis. This substitution will be allowed at the rate: 15 semester credit hours equals six months of required experience. General college-level study* in any curriculum area other than police science may be substituted for up to a maximum of one year of the required experience. This substitution will be allowed at the rate: 20 semester credit hours equals six months of required experience.

*At a regionally accredited college or university, or one recognized by the New York State Education Department as following acceptable educational practices.

For No. 24-238 Supervising Campus Security Officer: four years of the experience required for Campus Security Officer II. College study may be substituted for experience at the same rate as described for Campus Security Officer II.

For No. 24-237 Campus Security Specialist: four years of the experience required for Campus Security Officer II, with the additional requirement that at least one year of the experience must have been in a full-time investigative position. College study may be substituted for the non-investigative portion of the required experience at the same rate as described for Campus Security Officer II.

If you expect to complete the above educational requirements by June 30, 1975, and meet all other requirements, you can be conditionally admitted to the examination. You cannot be considered for appointment, however, until you submit proof of having completed the educational requirements to the Department of Civil Service.

License Requirement: At the time of appointment candidates must possess a driver's license valid for operating a motor vehicle in New York State.

ADDITIONAL REQUIREMENTS: At the time of examination and appointment, candidates must be physically strong and active; be free from all mental and physical defects, deformities or disease; have at least 20/40 vision in each eye with or without corrective lenses and not less than 20/70 in each eye unaided; have weight in proportion to height; and have satisfactory hearing. Candidates may also be required to demonstrate physical strength and agility. A medical examination will only be given to those being considered for appointment.

Candidates must be legally eligible to carry firearms. Conviction of a felony will bar examination and appointment, because under Federal law an unpardoned felon is ineligible to carry firearms. Conviction of a misdemeanor, or other violation of law, or a history of mental illness or nervous disorder, may bar examination and appointment. Because of the duties of the position, a thorough character investigation will be made.

Candidates may apply for one or more examinations on one application by indicating the number and title of each examination for which they are applying.

Although promotion examinations are being held for these titles, it is expected that appointments will be made as the result of these open-competitive examinations. Candidates eligible for the promotion examinations will NOT be admitted to these open-competitive examinations.

S-1/T-4-JUD-map

Issued: 1/3/75

INFORMATION FOR CANDIDATES

APPLICATION FORMS: You may obtain these forms by mail or in person at the following offices of the State Department of Civil Service: State Office Building Campus, Albany, New York 12226; or Two World Trade Center, New York, New York 10047; or Suite 750, 1 West Genesee Street, Buffalo, New York 14202. Applications may also be obtained by calling in person at one of the local offices of the New York State Employment Service; these offices cannot handle mail requests. Specify the examination by its number and title. Mail your application form when completed to the State Department of Civil Service, State Office Building Campus, Albany, New York 12226. The Department of Civil Service reserves the right to reject for lateness or to accept applications filed after the advertised filing period.

WD-17.1 (9-73)

Unless otherwise indicated, neither New York State residence nor United States citizenship is required for this examination.

Whenever practicable, written tests will be held in locations convenient to the candidates. State on your application the city and state in which you wish to be tested.

ADMISSION TO EXAMINATION: Notice to appear for the test will be conditional as review of applications may not be made until after the first test. Call or wire this Department if you have not received your notice to appear 3 days before the date of the first test. All statements made on your application are subject to investigation and a medical examination may be required.

This announcement is being issued and the examination will be held in compliance with the New York State Civil Service Law and the Rules and Regulations of the New York State Department of Civil Service.

People v. Ware (not yet reported).

STATE OF NEW YORK
COUNTY COURT : COUNTY OF ERIE

* * * * *

THE PEOPLE OF THE STATE OF NEW YORK,
Appellant

vs.

JAMES E. WARE,
Defendant-Respondent

* * * * *

EDWARD C. COSGROVE, ESQ.
District Attorney of Erie County
By: JOSEPH J. HODAN, ESQ.
Assistant District Attorney
Appearing for the People

WILLIAM SIMS, ESQ.
340 Statler Hilton
Buffalo, New York 14202
Attorney for Defendant-Respondent

M E M O R A N D U M

HEFFRON, J.

The People appeal from a dismissal of an accusatory instrument charging the defendant with violating Sections 140.05, 205.30, and 205.05 of the Penal Law on October 10, 1974, in the City Court of Buffalo. The arresting officer was a peace officer employed by the State University of New York at Buffalo.

In the Court below the defendant-respondent moved to dismiss the information on the ground that the arresting officer was not properly appointed under Education Law Section 355(2)(m).

People v. Ware (not yet reported).

The Court granted his motion because, the Court stated, under the statutory law only the Board of Trustees of the State University is empowered to appoint peace officers, and the peace officer involved in this particular case had been appointed by Robert Ketter, President of the State University of New York at Buffalo. The Court reasoned that this appointment was beyond the scope of President Ketter's authority and therefore the peace officer had no power to arrest the defendant-respondent. Since the arrest was unauthorized, the information was dismissed.

Education Law Section 355(2)(m) clearly indicates that the Board of Trustees of the State University is empowered to appoint peace officers to protect the campus. The State University operates under rules and regulations promulgated by the Board of Trustees pursuant to the authority of the Education Law Sections 353, 354, 355 and such rules and regulations, once filed with the Secretary of State, have the force and effect of law (People v. Malmud, 4 A.D. 2d 86; People v. Cule, 10 NY 2d 123). Gadzella v. Neumaier, 67 Misc. 2d 585. The rules and regulations promulgated by the Board of Trustees, pursuant to statutory authority, Education Law Section 355(2)(b), assigned powers and duties to executive and administrative officers of the State University system. 8 NYCRR 328.12 reads as follows:

"Executive and administrative officers shall have such powers, duties and responsibilities as may be assigned by the board of trustees or by the chancellor."

People v. Ware (not yet reported).

Furthermore, Education Law 355(2)(h) provides that the Board of Trustees shall have the power to appoint the head of each state-operated institution and to prescribe the powers and duties of the head of each such institution and to appoint or provide for the appointment of other employees as may be necessary. This the Board of Trustees has done by a resolution dated September 30, 1972, and submitted to the Court below, in which the chief administrative officer of each state-operated institution of State University was given the power to designate and appoint peace officers at the institution where he is employed. Pursuant to this resolution, the chief administrative officer of the State University of New York at Buffalo appointed the arresting officer in this case as a peace officer who shall have the powers of a police officer as defined in the Criminal Procedure Law. Therefore, the complainant in this action was properly appointed and had the authority to make the arrest of the defendant-respondent.

Therefore, this Court reverses the Court below on the law and the facts and reinstates the accusatory instrument and remits to the Court below for trial.

Submit order.

William G. Heffron
J. C. C.

Dated: Buffalo, New York
June 2, 1975

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AFFIDAVIT OF SERVICE

RE: CLIFFORD J. ARNOLD v. DONALD M. AGEN and VICTOR CERAMI

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:
CITY OF SYRACUSE)

EVERETT J. REA , being duly sworn, deposes and says:

That he is associated with Spaulding Law Printing Company of Syracuse, New York, and is over twenty-one years of age.

That at the request of HON. LOUIS J. LEFKOWITZ, Attorney General of the State of New York, Attorney for Defendants-Appellants,
~~(s)e~~he personally served ^{one (1) copy} ~~three (3) copies~~ of the printed ~~[Record]~~~~[Brief]~~
[Appendix] of the above-entitled case addressed to:

DAVID GERALD JAY, ESQ.
Attorney at Law
1730 Liberty Bank Bldg.
Buffalo, N. Y. 14202

DANIEL LENAHAN, ESQ.
Attorney at Law
2056 Seneca St.
Buffalo, N. Y. 14210

by depositing true copies of the same securely wrapped in a postpaid wrapper in a Post Office maintained by the United States Government in the City of Syracuse, New York on June 26, 1975.

Everett J. Rea

Sworn to before me this 26th
day of June , 1975.

Everett J. Rea

Ruth S. Moloughney
Commissioner of Deeds

cc: John Shea, Esq.
Assistant Attorney General